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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 JAY GEROW, et al.,

10 Plaintiffs,

11 v.

12 STATE OF WASHINGTON, et al.,

13 Defendants.

CASE NO. C08-5087BHS

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION  
FOR A PROTECTIVE ORDER;  
STAYING DISCOVERY  
PENDING RESOLUTION OF  
MOTION TO DISMISS; AND  
QUASHING DEPOSITION  
SUBPOENAS

16 This matter comes before the Court on Defendants' Motion for a Protective Order;  
17 Staying Discovery Pending Resolution of Motion to Dismiss; and Quashing Deposition  
18 Subpoenas (Dkt. 22). The Court has considered the pleadings filed in support of and in  
19 opposition to the motion and the remainder of the file and hereby grants in part and denies  
20 in part the motion for the reasons stated herein.

21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22 On February 13, 2008, Plaintiffs Jay Gerow and ZDI Gaming, Inc., filed a  
23 complaint against Defendants State of Washington, Rick Day, John Ellis, Janice Niemi,  
24 Peggy Bierbaum, Kevin Rojecki, and Margarita Prentice. Dkt. 1. Plaintiffs allege that  
25 Defendants violated 42 U.S.C. § 1983, Washington tort laws, and the Washington State  
26 Constitution. *Id.*

1 On August 28, 2008, Defendants filed a Motion for a Protective Order; Staying  
2 Discovery Pending Resolution of Motion to Dismiss; and Quashing Deposition  
3 Subpoenas. Dkt. 22. Defendants claim that Plaintiffs have requested the depositions of  
4 Thomas Fitzsimmons, John Lane, and David Trujillo. *Id.* Defendants have also filed a  
5 Motion to Dismiss (Dkt. 21) that is noted for consideration on September 26, 2008. On  
6 September 5, 2008, Plaintiffs responded. Dkt. 23. On September 8, 2008, Defendants  
7 replied. Dkt. 29.

## 8 II. DISCUSSION

9 Defendants move the Court for (1) a protective order staying discovery and (2) an  
10 order quashing Plaintiffs' subpoenas. Dkt. 22.

### 11 1. Protective Order Staying Discovery

12 "The court may, for good cause, issue an order to protect a party or person from  
13 annoyance, embarrassment, oppression, or undue burden or expense . . . ." Fed. R. Civ.  
14 P. 26(c). Defendants argue that there is "good cause" to issue a protective order staying  
15 discovery until the resolution of their motion to dismiss. *See* Dkt. 22 at 8-10. Defendants  
16 claim that "[c]oncepts of judicial economy are offended by allowing . . . discovery to  
17 proceed while a Motion to Dismiss, which will likely dispose of the entire case and  
18 controversy, is pending." *Id.* at 10. Plaintiffs counter that they are "of the exact opposite  
19 opinion" regarding the outcome of the motion to dismiss. Dkt. 23 at 12.

20 The filing of a dispositive motion inherently creates the possibility that further  
21 discovery may be rendered moot or unnecessary. Defendants offer no persuasive reason  
22 for disregarding the case schedule in this matter, and if Defendants are unable to timely  
23 produce material, then they may move for an appropriate extension. A pending  
24 dispositive motion, however, does not make discovery obligations unduly burdensome or  
25 expensive. Therefore, Defendants' motion for a protective order is denied because  
26 Defendants have failed to show good cause for the order.

1     **2.     Motion to Quash**

2             Serving a subpoena requires delivering a copy to the named person and, if the  
3 subpoena requires that person's attendance, tendering the fees for one day's attendance  
4 and the mileage allowed by law. Fed. R. Civ. P. 45(b)(1). The subpoena must also "set  
5 out the text of Rule 45(c) and (d)." Fed. R. Civ. P. 45(a)(1)(A)(iv).


6             Defendants have moved to quash subpoenas requiring Thomas Fitzsimmons, John  
7 Lane, and David Trujillo to appear at depositions. Dkt. 22 at 10. Mr. Fitzsimmons was  
8 scheduled to be deposed on September 9, 2008 and, for the purposes of this order, the  
9 Court will assume that the deposition has occurred. As for the subpoenas that Plaintiffs  
10 served on Mr. Lane and Mr. Trujillo, Defendants claim that they are substantively and  
11 procedurally flawed. Dkt. 29 at 5; *see also* Dkt. 30 at 5-10 (actual subpoenas). The  
12 subpoenas do not contain the text of Fed. R. Civ. P. 45(c) and (d). Moreover, Defendants'  
13 counsel claims that Plaintiffs did not provide attendance or mileage fees for either Mr.  
14 Lane or Mr. Trujillo. Dkt. 30, Declaration of H. Bruce Marvin, ¶ 4. Therefore,  
15 Defendants' motion to quash the subpoenas that Plaintiffs served on Mr. Lane and Mr.  
16 Trujillo is granted because the subpoenas do not comply with Fed. R. Civ. P. 45.

17                             **III. ORDER**

18             Therefore, it is hereby

19             **ORDERED** that Defendants' Motion for a Protective Order; Staying Discovery  
20 Pending Resolution of Motion to Dismiss; and Quashing Deposition Subpoenas (Dkt. 22)  
21 is **GRANTED in part** and **DENIED in part** as stated herein.

22             DATED this 9th day of September, 2008.

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26   BENJAMIN H. SETTLE  
27   United States District Judge  
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